

REMARKS/ARGUMENTS

Claims 4-8, 11 and 12 are pending.

Previously, claims 4-8, 11 and 12 were allowed; however, the allowance to issue was withdrawn prior to payment of the issue fee.

Claim 1-3 and 9-10 were previously canceled, without prejudice, in order to obtain patent issuance (as per the allowance that was issued, but that was then withdrawn prior to payment of the issue fee).

The following remarks respond to the new rejections of the April 5, 2006 office action:

1. Claims 4 and 5 were rejected under 35 USC 102(b) as anticipated by Kaufman.
Applicant first notes that Kaufman was long ago presented as a reference in support of grounds for a 102 rejection of originally submitted claims 1 and 2, and that these claims were previously cancelled in order to expedite issuance of a patent including claims 4 and 5 which the Examiner stated in the earlier office action of August 5, 2005 would be allowable if so rewritten. The sole reason for cancellation of those claims 1 and 2 at that time, was in order to expedite patent issuance of then-allowed (or objected to but allowable) claims.

The present office action now rejects claims 4 and 5, which depended from previously canceled base claim 3, and which was incorporated into the pending amended form of claims 4 and 5 in accordance with the Examiner's statement that these claims 4 and 5 would be allowable if so rewritten. Claims 3, as well as 4 and 5, were never previously rejected on the basis of Kaufman.

Nonetheless, the present office action relies on Kaufman for rejecting claims 4 and 5 as rewritten in accordance with the Examiner's prior suggestions. Applicant submits that claims 4 and 5, as previously submitted, are not anticipated by Kaufman. The claims specifically include the limitation that the internal separator is "**for holding the vial**". Kaufman does not have any mechanism, whatsoever, for holding any vial. Further, Kaufman does not disclose that an "internal separator" that serves such purpose as holding any vial.

Although it is not believed that the term "holding" could mean anything less than in some manner retainer or maintaining the vial thereby, Kaufman would, in any event, not even be useful for containing (i.e., as the Examiner apparently contends is included in the meaning of "holding") a vial. Vials are medical/diagnostic lab vessels, and these are typically fragile, if not easily breakable, materials. Moreover, contents of these vials can be radically altered (chemically, biologically, etc.) if the vials are not held in at least a somewhat retained or maintained manner by packaging for containing the vials. Any vial placed in Kaufman would rattle around in the space between the separator sides. Kaufman would not be used for vials.

Applicant has considered whether any particular added limitation would resolve the Examiner's broad view of the meaning of "holding". However, Applicant submits that "holding" means just that, and when vials are what are held, the meaning has inherent limits as to and for the purpose of Applicant's claimed invention for vials. Under these circumstances, Applicant submits that the Examiner's belief of such a broad meaning of "holding" is inconsistent with the meaning that could be reasonably conceived. If the Examiner has suggestions for words that he would prefer, Applicant's representative would appreciate discussing this with the Examiner. In Applicant's vocabulary and vernacular, Applicant can not perceive the grounds and submits that the take on Kaufman as addressed in the rejection is overly

broad/conservative to the extent that is not proper. Any box with a divider for separate compartments would be analogous to the construction espoused in the rejection. Of course, any such box could not serve for containing and holding vials as per Applicant's claims.

2. Claim 7 was rejected under 35 USC 102(3) as anticipated by Petrelli. As with the Kaufman rejection, Petrelli is similarly more broadly construed than is reasonable in making the rejection of claim 7. To further clarify, however, Applicant's claim 7 is here amended to provide that "folding of the sheet forms a retainer **for the vial**". In fact, Petrelli describes the folds of the sheet to form compartments, and that the compartments and container contain (or "hold" per Petrelli's use of that term in meaning contains within) a piece or the like. Petrelli does not disclose any step of folding to form a retainer for a vial or that the folded sheet is what itself forms the retainer.

3. Claims 6, 8 & 11 were rejected under 35 USC 103(a) as unpatentable over Petrelli in view of Kaufman. Petrelli does not disclose any container for retaining a vial of the type of Applicant's claimed invention. Petrelli refers to forming individual compartments for separate items. However, the compartments do not retain or "hold" any vial, as per Applicant's claims and/or in keeping with the meaning inherent in the term "holding" of Applicant's claims.

As previously discussed in number 1 above, Kaufman similarly does not provide for any "holding" of a vial as per Applicant's claims.

Applicant thanks the Examiner for the allowance of claim 12.

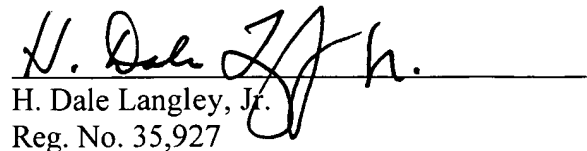
Because the concerns of the Examiner in the present office action appear to be directed to the meaning of the word "holding" in the context of Applicant's claims and disclosure, Applicant

requests that the Examiner call the undersigned if the foregoing is not satisfactory to the Examiner. Applicant disagrees that "hold" can be so broadly construed as the Examiner contends. Neither of the references relied on can "hold" any vial – they can only contain pieces within separate compartments and the like. This is not "hold", and any use, if any, of the term hold in the specification of either of the references is not consistent with the meaning of "hold" as would be generally understood in common, technical or other parlance. Nonetheless, Applicant's representative would be happy to discuss any thoughts of the Examiner (but probably would not consider added limits or more restrictive meaning or wording as appropriate). Further explanation or wording of the claims in keeping with the broad construction and intent that appears patentably distinct from the purported references (and also as the Examiner has indicated he finds) would, however, certainly be respectfully considered.

If the Examiner has any questions or comments, the undersigned attorney for Applicant respectfully requests a call to discuss any issues. The Office is authorized to charge any excess fees or to credit any overage to the undersigned's Deposit Account No. 50-1350.

Respectfully submitted,

Date: August 7, 2006


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